

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHNNY LEE MOORE,

Plaintiff,

v.

CONTRA COSTA COUNTY PUBLIC  
DEFENDER, et al.,

Defendants.

No. C 05-3214 MMC (PR)

**ORDER OF DISMISSAL**

Plaintiff, a California prisoner proceeding pro se, filed the above-titled civil rights action pursuant to 42 U.S.C. § 1983, against the attorneys appointed to represent him in criminal proceedings in state court. He has paid the filing fee.

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

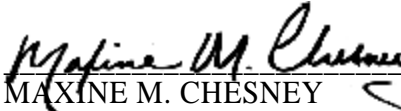
1 Here, plaintiff claims that the Contra Costa County Public Defender, and the  
2 deputies he assigned to represent petitioner, provided him with deficient representation in  
3 connection with an ongoing criminal prosecution in state court. In particular, plaintiff  
4 claims that defendants have provided deficient representation by failing to meet with him on  
5 a sufficiently frequent basis, failing to file meritorious motions and to subpoena helpful  
6 witnesses, and failing to adequately challenge the prosecution's evidence and witnesses. A  
7 public defender does not act under color of state law when performing a lawyer's traditional  
8 functions in representing a defendant in a state court criminal prosecution; such traditional  
9 functions include entering pleas, making motions, objecting at trial, cross-examining  
10 witnesses, and making closing arguments. Polk County v. Dodson, 454 U.S. 312, 318-19  
11 (1981).<sup>1</sup> The action or lack of action alleged herein does not constitute conduct taken  
12 under color of state law. See id.

13 Accordingly, plaintiff's claims against his attorneys are DISMISSED for failure to  
14 state a cognizable claim for relief.

15 The Clerk shall close the file.

16 IT IS SO ORDERED.

17 DATED: October 24, 2005

18   
MAXINE M. CHESNEY  
19 United States District Judge

20  
21  
22  
23  
24  
25  
26 <sup>1</sup>Exceptions may exist for the Public Defender's performance of purely administrative  
27 tasks or the creation of unconstitutional policies. See Miranda v. Clark County, Nevada, 319  
28 F.3d 465, 468-70 (9th Cir. 2003) (en banc) (noting challenge to policy of administering lie  
detector test and allocating minimal resources to clients who fail it, and to policy to assign  
least-experienced lawyers on staff to capital cases, may be cognizable under § 1983). Such  
administrative and policy-making tasks are not alleged in the instant action.